IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUIT NO.1077 OF 1997

Central Bank of India — Plaintiffs
vs.
Mr.Abdul Nasir — Defendants

Ms.Rekha Tolat i/b.M/s.Tolat & Co. for the plaintiffs.

Mr.A.P. Guram, Asstt. Prothonotary & Sr.Master,
representative of Court Receiver present.

CORAM : ANOOP V. MOHTA,J.

DATED : 27th June, 2007

ORAL JUDGMENT:.

The present Suit is the usual Bank suit for recovery of the amounts advanced to the defendant. None appeared for the defendant though served.

2. By order dated 3rd September, 1999 in notice of motion no.2037/1998 as the property described in the plaint has been mortgaged in favour of the plaintiffs and as the defendant though agreed to pay the said amounts by letter dated 30th June, 1998, not paid the same, this Court has granted injunction in terms of prayer clause (a) without the power to sell. Prior to that on 30th June, 1998, the Court has granted ad-interim order in terms of prayer clause (b). The learned counsel appearing for the plaintiffs makes

statement that there was no further steps taken by the plaintiffs in view of the above two orders. Receiver's representative also makes statement that the property was never taken possession in view of these orders as the plaintiffs never informed or took any steps to take possession by the Court Receiver as contemplated under the Rules.

3. The matter has been listed under the caption of undefended Suit. None appeared for the defendant.

4. The plaintiffs have filed affidavit in lieu of examination-in chief dated 19th June, 2007 in support of their claim. Those documents are marked as Exhibit P-1 collectively. The contents of those documents and signatures thereon proved as the averments made in the affidavit in examination in chief filed by the Chief Branch Manager of the plaintiffs remained uncontroverted. In the result, there is no dispute to the documents filed by the plaintiffs as well as its contents.

5. In the result, based on the averments made in the plaint as well as in the affidavits and the documents filed on the record, the plaintiffs have proved its case. Therefore, the Suit is decreed in terms of prayer clauses (a), (b), (c), (d) except the future rate of

interest which read thus:

> (a) that the defendant be ordered and decreed to pay to the plaintiffs a sum of Rs.6,42,856.76 (Rupees six lakhs fourty two thousand eight hundred fifty six and paise seventy six only) as per particulars annexed as Exhibit "L" hereto with further interest on the said amount of Rs.6,42,856.76 at the rate of 18.75% per annum from the date of suit till judgement and further interest on the said amount at the rate of 18.75% per annum from the date of judgement till realisation;
>
> (b) that it may be declared that the said Shop at Oshiwara and goods is validly hypothecated and charged in favour of the plaintiffs for a repayment of the amounts mentioned in prayer (a) above and the costs of the suit as hereinafter mentioned in prayer (i) hereto.
>
> (c) that it may be declared that the repayment of the amount mentioned in prayer (a) above is charged on and secured by the hypothecated shop at Oshiwara and goods covered by the hypothecation agreement dated 25th May 1991, Exhibit "A" hereto.
>
> (d) that the shop at Oshiwara and goods hypothecated to the plaintiffs under the hypothecation agreement dated 25th May 1991 mentioned in prayer (c) above; be sold by and under the directions of this Honourable Court and net sale proceeds thereof be paid over to the plaintiffs in or towards the satisfaction of the amounts mentioned in prayer (a) above.

6. So far as the future interest is concerned, in the facts and circumstances of the case, the plaintiffs are entitled to 9% instead of 18.75% rate of interest from the date of Suit till judgement and/or realisation.

7. The Court Receiver stands discharged.

8. The excess courtfee, if any, be refunded to the plaintiffs.

9. Decree be drawn accordingly.

10. No costs.

[ANOOP V. MOHTA,J.]